

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

HALF DENTAL FRANCHISE, LLC,
A NEVADA LIMITED LIABILITY COMPANY;
CHAYSE MYERS, AN INDIVIDUAL; AND
MATT BAKER, AN INDIVIDUAL,
Plaintiffs/Counterdefendants/Appellees,

v.

ROBERT HOUCHIN AND JANE DOE HOUCHIN,
A MARRIED COUPLE,
Defendants/Counterclaimants and Cross-Claimants/Appellants.

No. 2 CA-CV 2016-0044
Filed September 2, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. C20152633
The Honorable Richard S. Fields, Judge

APPEAL DISMISSED

COUNSEL

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and

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 In this contract action, Robert Houchin appeals from the trial court's order holding him in contempt of court and imposing sanctions against him. For the following reasons, we dismiss for lack of jurisdiction.

Factual and Procedural Background

¶2 In June 2015, Half Dental Franchise, LLC ("HDF"), Chayse Myers, and Matt Baker (collectively "Half Dental") filed a civil action for injunctive relief and damages against Houchin and others.¹ According to Half Dental's complaint, Houchin conspired to "dissolve HDF" and "usurp [its] corporate opportunities," in part, by violating a dental practice franchise agreement. The same day that Half Dental filed its complaint, the trial court entered a temporary restraining order enjoining Houchin from taking certain action related to HDF and the dental practice. After a two-day

¹Although the complaint listed several other defendants, some of whom were also named in the temporary restraining order, preliminary injunction, and contempt proceedings discussed below, we only discuss Houchin's involvement, as he is the only appellant.

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hearing, the court also entered a preliminary injunction, which expanded the provisions of the temporary restraining order.

¶3 The following day, Half Dental filed a motion for an order to show cause why Houchin should not be held in contempt of court for violating the temporary restraining order and preliminary injunction. At the conclusion of a four-day hearing, the trial court found Houchin in contempt. It also determined that an award of attorney fees would be an appropriate sanction and ordered Half Dental to submit an affidavit of attorney fees.

¶4 Houchin then filed a motion for a new trial pursuant to Rule 59, Ariz. R. Civ. P., as to the contempt finding. After hearing oral argument, the trial court denied the motion. At the same time, the court set the amount for the award of attorney fees and directed Half Dental to submit a form of judgment. The court subsequently signed an “Order and Judgment,” which collectively found Houchin in contempt of court, imposed sanctions, including the payment of attorney fees, and denied Houchin’s motion for a new trial. Houchin now appeals that order.

Jurisdiction

¶5 Half Dental argues this court lacks jurisdiction over Houchin’s appeal because it stems from a contempt order. Because our jurisdiction is defined by statute, *see* A.R.S. § 12-2101(A), we have an obligation to consider whether we have jurisdiction over an appeal and, if lacking, to dismiss, *see Robinson v. Kay*, 225 Ariz. 191, ¶ 4, 236 P.3d 418, 419 (App. 2010); *Grand v. Nacchio*, 214 Ariz. 9, ¶ 12, 147 P.3d 763, 769 (App. 2006).

¶6 Generally, civil contempt orders are not appealable. *BMO Harris Bank Nat’l Ass’n v. Bluff*, 229 Ariz. 511, ¶ 5, 277 P.3d 216, 218 (App. 2012); *Trombi v. Donahoe*, 223 Ariz. 261, ¶ 14, 222 P.3d 284, 288 (App. 2009). Instead, such orders must be challenged by filing a petition for special action. *BMO Harris Bank*, 229 Ariz. 511, ¶ 5, 277 P.3d at 218; *Elia v. Pifer*, 194 Ariz. 74, ¶ 30, 977 P.2d 796, 802 (App. 1998). However, the general rule does not apply – and a contempt order is appealable – when “the substance or effect of the order” goes beyond a finding of contempt and “qualifies the order as one of

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those made appealable pursuant to § 12-2101.” *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, ¶ 21, 211 P.3d 16, 26 (App. 2009). For example, in *Green*, this court concluded that we had appellate jurisdiction over a sanctions order entered pursuant to the civil-contempt statute, A.R.S. § 12-864, because that order determined the merits of the underlying case and fell within the definition of an appealable interlocutory order under § 12-2101(A)(6). 221 Ariz. 138, ¶¶ 9-10, 15-17, 23, 211 P.3d at 22-26.

¶7 By his own admission, Houchin is challenging the trial court’s order “holding [him] in contempt and assessing damages against him.” That order was a direct result of Half Dental’s motion for an order to show cause why Houchin should not be held in contempt and the subsequent contempt proceedings. *See Engineers v. Sharpe*, 117 Ariz. 413, 416, 573 P.2d 487, 490 (1977) (“[T]he appealability of an order ‘turns on the character of the proceedings which resulted in the order appealed from.’”), *quoting Kemble v. Porter*, 88 Ariz. 417, 419, 357 P.2d 155, 156 (1960). Unlike in *Green*, the order does not extend beyond the finding of contempt.² *See Stoddard v. Donahoe*, 224 Ariz. 152, ¶ 7, 228 P.3d 144, 146 (App. 2010) (finding of contempt and corresponding sanctions not appealable). It is therefore not appealable. *See BMO Harris Bank*, 229 Ariz. 511, ¶ 5, 277 P.3d at 218; *Trombi*, 223 Ariz. 261, ¶ 14, 222 P.3d at 288.

¶8 Houchin nevertheless points out that the trial court entered its order pursuant to Rule 54(c), Ariz. R. Civ. P., which provides that “[a] judgment shall not be final unless the court states that no further matters remain pending and that the judgment is entered pursuant to Rule 54(c).” He therefore reasons that the order

²Although the denial of a motion for a new trial is generally appealable, *see* § 12-2101(A)(5)(a), Houchin does not suggest that is the basis of his appeal. In any event, a party cannot appeal the denial of a motion for a new trial when the underlying order is itself not appealable. *See Santa Maria v. Najera*, 222 Ariz. 306, ¶ 10, 214 P.3d 394, 396 (App. 2009) (denial of motion for new trial directed at non-final partial summary judgment not appealable). For the reasons discussed above, the underlying contempt order in this case is not appealable.

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was a “final judgment” and is appealable pursuant to § 12-2101(A)(1). This argument is contrary to established Arizona law.

¶9 “A statement that a judgment is final pursuant to Rule 54(c) when, in fact, claims remain pending does not make a judgment final and appealable.” *Madrid v. Avalon Care Ctr.-Chandler, L.L.C.*, 236 Ariz. 221, ¶ 6, 338 P.3d 328, 331 (App. 2014). The trial court’s order in this case resolved only the contempt issues. It did not purport to address the merits of Half Dental’s complaint or Houchin’s counterclaims and cross-claims. It is therefore not an appealable final judgment under § 12-2101(A)(1). See *Green*, 221 Ariz. 138, ¶ 14, 211 P.3d at 24 (“An appealable final judgment under § 12-2101[(A)(1)] ‘decides and disposes of the cause on its merits, leaving no question open for judicial determination.’”), quoting *Props. Inv. Enters., Ltd. v. Found. For Airborne Relief, Inc.*, 115 Ariz. 52, 54, 563 P.2d 307, 309 (App. 1977).³

Attorney Fees

¶10 Half Dental requests its attorney fees on appeal pursuant to A.R.S. § 12-341.01. Section 12-341.01(A) provides: “In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees.” In our discretion, we grant Half Dental’s request, contingent upon its compliance with Rule 21, Ariz. R. Civ. App. P. As the prevailing party on appeal, Half Dental is also entitled to its costs. See *Robinson*, 225 Ariz. 191, ¶ 8, 236 P.3d at 420 (“[A]ppellee entitled to costs as prevailing party when appeal dismissed.”).

³“In certain cases where we lack appellate jurisdiction, we have nevertheless elected to assume special-action jurisdiction over a matter brought as a direct appeal.” *Catalina Foothills Unified Sch. Dist. No. 16 v. La Paloma Prop. Owners Ass’n*, 229 Ariz. 525, ¶ 20, 278 P.3d 303, 309 (App. 2012). However, Houchin does not ask us to do so, and “our own review does not demonstrate that this case merits the exercise of our extraordinary jurisdiction.” *Id.*

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Disposition

¶11 For the foregoing reasons, we dismiss this appeal for lack of jurisdiction.